

Plaintiffs' Exhibit 182

In the Matter Of:

United States of America v

Google, LLC

JUDITH CHEVALIER, PH.D.

March 05, 2024



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<p>1 about those -- those fees, we</p> <p>2 have to think about -- we have to</p> <p>3 apportion them.</p> <p>4 So apportionment is</p> <p>5 required of fees directly or</p> <p>6 indirectly paid that -- looking</p> <p>7 at apportionment or thinking</p> <p>8 about apportionment is an input</p> <p>9 for any fees along this stack,</p> <p>10 whether they are direct checks</p> <p>11 written by the FAAs or indirect.</p> <p>12 BY MS. CLEMONS:</p> <p>13 Q. So your apportionment</p> <p>14 criticisms would differ if an FAA wrote a</p> <p>15 check to Google instead of to its ad</p> <p>16 agency?</p> <p>17 MR. JUSTUS: Objection.</p> <p>18 Form.</p> <p>19 THE WITNESS: Do you mean</p> <p>20 if there was no ad agency in</p> <p>21 between?</p> <p>22 BY MS. CLEMONS:</p> <p>23 Q. No. If the ad agency was</p> <p>24 still involved in the exact same way, but</p>	<p>1 the payments flowed.</p> <p>2 MS. CLEMONS: Okay. We can</p> <p>3 take a break.</p> <p>4 THE VIDEOGRAPHER: Going</p> <p>5 off record. The time is 1621.</p> <p>6 (Short break.)</p> <p>7 THE VIDEOGRAPHER: Going</p> <p>8 back on the record. The time is</p> <p>9 1647.</p> <p>10 BY MS. CLEMONS:</p> <p>11 Q. Before we went on break,</p> <p>12 Professor Chevalier, you had mentioned</p> <p>13 that advertisers don't directly pay for</p> <p>14 exchange services.</p> <p>15 Do you recall that</p> <p>16 testimony?</p> <p>17 A. Yes.</p> <p>18 Q. What is your assessment</p> <p>19 based on, that advertisers don't directly</p> <p>20 pay for exchange services?</p> <p>21 A. So advertisers, you know,</p> <p>22 enter -- well, advertisers or their</p> <p>23 agencies enter into contracts or</p> <p>24 relationships with, you know, contract</p>
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<p>1 the payment went from the FAA to Google</p> <p>2 without going through the ad agency,</p> <p>3 would your analysis of the -- of Simcoe's</p> <p>4 apportionment analysis change?</p> <p>5 A. So my analysis of the</p> <p>6 apportionment would not change --</p> <p>7 would -- would -- I would still think</p> <p>8 those fees need to be apportioned whether</p> <p>9 the ad agency fees need to be considered</p> <p>10 an apportionment, whether they are paid</p> <p>11 separately from payments to Google or</p> <p>12 together with payments to Google.</p> <p>13 Q. And very quickly. How would</p> <p>14 that affect whether the ad agencies</p> <p>15 absorb any potential overcharge by AdX?</p> <p>16 A. So, again, my criticism of</p> <p>17 Professor Simcoe and Dr. Respass is they</p> <p>18 haven't undertaken an analysis of this,</p> <p>19 despite agencies being a part of the</p> <p>20 process and part of the costs of</p> <p>21 purchasing AdTech products.</p> <p>22 But my analysis of their --</p> <p>23 my concerns with their apportionment</p> <p>24 would be true whether -- no matter how</p>	<p>1 for the ad buying tools. And then the ad</p> <p>2 buying tools, when they submit bids to ad</p> <p>3 buying tools, they're -- you know, they</p> <p>4 will pay a fee for the use of those ad</p> <p>5 buying tools.</p> <p>6 And then the fee that's</p> <p>7 being paid to the ad exchange is</p> <p>8 subtracted from the bid so that the bid</p> <p>9 is -- so that the publisher is -- you</p> <p>10 know, the publisher is choosing between</p> <p>11 bids. But the publisher is the one who</p> <p>12 enters into a contractual relationship</p> <p>13 with the ad exchange.</p> <p>14 Q. So is your statement that</p> <p>15 advertisers don't directly pay for</p> <p>16 exchange services based on advertisers</p> <p>17 not having a contract to pay for exchange</p> <p>18 services?</p> <p>19 A. So the exchange services</p> <p>20 are -- the exchange -- the exchange</p> <p>21 services are deducted from the bid when</p> <p>22 the bids are being, you know, evaluated</p> <p>23 by the publisher.</p> <p>24 And so, you know, I think</p>

<p style="text-align: right;">Page 258</p> <p>1 that's the sense in which I mean that.</p> <p>2 Like, the advertiser pays kind of an</p> <p>3 explicit fee off the top for the ad</p> <p>4 buying tools, but the fee is deducted</p> <p>5 from the bid for the publisher.</p> <p>6 Q. So does the publisher</p> <p>7 directly pay Google the AdX take rate?</p> <p>8 A. So the -- if, for example, a</p> <p>9 publisher has a special deal with regard</p> <p>10 to a take rate, that would be between the</p> <p>11 publisher and the ad exchange.</p> <p>12 And so in that sense, the --</p> <p>13 in that sense, the publisher -- the</p> <p>14 publisher pays. The -- I mean, the fees</p> <p>15 are deducted from the middle, and so the</p> <p>16 actual, I think, as we know, incidence of</p> <p>17 the fee depends on, you know, marketplace</p> <p>18 dynamics.</p> <p>19 Q. So when the fees are</p> <p>20 deducted from the middle --</p> <p>21 A. Mm-hmm.</p> <p>22 Q. -- where does the money come</p> <p>23 from to cover Google's portion of the</p> <p>24 revenue share?</p>	<p style="text-align: right;">Page 260</p> <p>1 Q. And then Google pays the</p> <p>2 contractually agreed upon revenue share</p> <p>3 out to the publisher, after it receives</p> <p>4 the winning bid from an advertiser,</p> <p>5 right?</p> <p>6 A. No. Google pays out the bid</p> <p>7 paid by the ad buying tool net, of the</p> <p>8 contractually agreed revenue share,</p> <p>9 before passing it on to the publisher.</p> <p>10 Q. Right. So it pays the</p> <p>11 portion of the total bid that is owed to</p> <p>12 the publisher under the publisher's</p> <p>13 contract with Google to share the revenue</p> <p>14 from that bid, right?</p> <p>15 A. Yes. It pays out the bid</p> <p>16 net of the fee, and the fee is according</p> <p>17 to the publisher's contract.</p> <p>18 Q. Okay. And so when you said</p> <p>19 advertisers don't directly pay for</p> <p>20 exchange services, were you referring --</p> <p>21 strike that.</p> <p>22 When you said advertisers</p> <p>23 don't directly pay for exchange services,</p> <p>24 who were you thinking, in the scenario we</p>
<p style="text-align: right;">Page 259</p> <p>1 A. So we might want to stick</p> <p>2 with a situation in which the advertiser</p> <p>3 isn't paying on a cost-per-click basis,</p> <p>4 to start. Just, I think, for ease of</p> <p>5 description. But I mean, the -- the ad</p> <p>6 exchange fee is deducted from the -- is</p> <p>7 deducted from the bid.</p> <p>8 So, ultimately, both -- you</p> <p>9 know, ultimately, it may have incidence</p> <p>10 on the advertiser and the publisher, but</p> <p>11 it comes from the bid and is contracted</p> <p>12 for by the publisher.</p> <p>13 Q. And who pays for the bid,</p> <p>14 the winning bid, in an ad auction on AdX?</p> <p>15 A. So the -- well, the ad</p> <p>16 buying tool pays the bid and the</p> <p>17 advertiser pays the ad buying tool.</p> <p>18 Q. If the ad buying tool is a</p> <p>19 Google ad buying tool, who pays the bid?</p> <p>20 A. So if the ad buying tool is</p> <p>21 a Google ad buying tool -- well, the --</p> <p>22 the bid is ultimately paid by the</p> <p>23 advertiser or an agency, if an agency is</p> <p>24 managing the transaction.</p>	<p style="text-align: right;">Page 261</p> <p>1 just discussed, does directly pay Google</p> <p>2 for exchange services?</p> <p>3 A. So the ad buying tool is</p> <p>4 typically the step in the chain before</p> <p>5 the exchange services.</p> <p>6 Q. And when Google owns the ad</p> <p>7 buying tool, does it pay itself?</p> <p>8 A. So my understanding is that,</p> <p>9 for example, for a DV360 to AdX</p> <p>10 transaction, effectively, yes, in that</p> <p>11 that's the -- that kind of generates the</p> <p>12 bookkeeping for both the -- for the</p> <p>13 supply side.</p> <p>14 Q. But in any event, the fee</p> <p>15 for exchange services comes out of the</p> <p>16 winning bid in AdX; is that right?</p> <p>17 A. The fee for exchange</p> <p>18 services comes out of the winning bid,</p> <p>19 yes.</p> <p>20 Q. Did you, as part of your</p> <p>21 work on this case, calculate a but-for</p> <p>22 take rate for AdX?</p> <p>23 MR. JUSTUS: Objection.</p> <p>24 Form.</p>

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<p>1 THE WITNESS: So as part of</p> <p>2 my work on this case, I</p> <p>3 calculated but-for take rates</p> <p>4 that I'm not affirmatively</p> <p>5 asserting are but-for take rates,</p> <p>6 but but-for take rates that are</p> <p>7 related to the methodologies put</p> <p>8 forth by -- or adjustments to the</p> <p>9 methodologies put forth by</p> <p>10 Professor Simcoe.</p> <p>11 BY MS. CLEMONS:</p> <p>12 Q. But you didn't do an</p> <p>13 independent assessment of what a but-for</p> <p>14 take rate would be in a world in which</p> <p>15 Google's conduct were found to be in</p> <p>16 violation of the antitrust laws, did you?</p> <p>17 MR. JUSTUS: Objection.</p> <p>18 Form.</p> <p>19 THE WITNESS: So just to be</p> <p>20 clear, the but-for take rates, as</p> <p>21 I understand it, that I'm</p> <p>22 adjusting Professor Simcoe's, are</p> <p>23 but-for take rates not under the</p> <p>24 assumption -- I mean, just to be</p>	<p>1 are improvements over his</p> <p>2 methodologies.</p> <p>3 But I'm not asserting that</p> <p>4 those are but-for take rates</p> <p>5 either for the specific conducts</p> <p>6 that he says he's evaluating or</p> <p>7 other conducts accused in this</p> <p>8 case more generally.</p> <p>9 BY MS. CLEMONS:</p> <p>10 Q. So do I understand correctly</p> <p>11 that you are criticizing Professor</p> <p>12 Simcoe's proffered but-for take rates,</p> <p>13 but you have not offered an opinion of</p> <p>14 your own as to what the correct but-for</p> <p>15 take rate should be if Google's conduct,</p> <p>16 the specific conduct that you mentioned,</p> <p>17 is found to have been in violation of the</p> <p>18 antitrust laws?</p> <p>19 MR. JUSTUS: Objection.</p> <p>20 Form.</p> <p>21 THE WITNESS: Right. So I</p> <p>22 am offering opinions about better</p> <p>23 calculations of but-for take</p> <p>24 rates, and more appropriate</p>
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<p>1 clear, are the but-for take rates</p> <p>2 that he's asserting in the</p> <p>3 circumstance in which the DFP,</p> <p>4 the so-called DFP-AdX tie and the</p> <p>5 Google Ads-AdX tie, are found to</p> <p>6 be illegal.</p> <p>7 So his -- his -- my</p> <p>8 understanding is that his but-for</p> <p>9 take rate is only under the --</p> <p>10 only speaks to those two conducts</p> <p>11 both being found to be illegal.</p> <p>12 And then what he says about</p> <p>13 UPR is a little bit</p> <p>14 contradictory, but possibly also</p> <p>15 UPR.</p> <p>16 He asserts in his report</p> <p>17 that his -- he asserts in his</p> <p>18 initial report that he's looking</p> <p>19 at those three conducts.</p> <p>20 So I am responding only to</p> <p>21 those -- you know, those</p> <p>22 assertions. And I'm calculating</p> <p>23 take rates in circumstances, the</p> <p>24 but-for take rates, that I assert</p>	<p>1 results with regard to but-for</p> <p>2 take rates.</p> <p>3 But I'm not asserting that</p> <p>4 I have identified a specific</p> <p>5 but-for take rate associated with</p> <p>6 the particular subset, the</p> <p>7 particular conducts that</p> <p>8 Professor Simcoe says he</p> <p>9 evaluates.</p> <p>10 BY MS. CLEMONS:</p> <p>11 Q. And Dr. Respass and Ms. Lim</p> <p>12 calculated an overcharge attributable to</p> <p>13 AdX for the FAAs using Dr. Simcoe's</p> <p>14 but-for take rates, right?</p> <p>15 A. So Dr. Respass calculates</p> <p>16 AdX damages -- damages from -- sorry.</p> <p>17 I'm just being hesitant because</p> <p>18 Dr. Respass proposes two categories of</p> <p>19 damages.</p> <p>20 But the first category of</p> <p>21 damages is damages that are based on the</p> <p>22 but-for take rates proposed by two of the</p> <p>23 but-for take rates proposed by Professor</p> <p>24 Simcoe, as well as a 10 percent but-for</p>


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1 A. So, one -- one
2 characteristic that we could use to
3 assess that is, for example, the
4 interquartile range of the data, and his
5 analysis with the 100,000-advertiser
6 cutoff -- and my analysis actually has a
7 quite similar interquartile range.
8 But, yes, in general,
9 smaller sample sizes would lead to more
10 sampling error.
11 MS. CLEMONS: Can we go off
12 the record?
13 MR. JUSTUS: Sure.
14 THE VIDEOGRAPHER: Going
15 off the record. The time is
16 1845.
17 (Short break.)
18 THE VIDEOGRAPHER: Going
19 back on the record. The time is
20 1854.
21 MS. CLEMONS: Thank you so
22 much for your time today,
23 Professor Chevalier. I pass the
24 witness.

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1 MR. JUSTUS: Nothing from
2 me.
3 MS. CLEMONS: Go off the
4 record.
5 THE VIDEOGRAPHER: This
6 marks the end of the deposition
7 of Judith Chevalier.
8 We're going off the record
9 at 1854.
10 *****
11 (Excused.)
12 (Deposition concluded at
13 approximately 6:54 p.m.)
14
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1
2 CERTIFICATE
3
4
5 I HEREBY CERTIFY that the
6 witness was duly sworn by me and that the
7 deposition is a true record of the
8 testimony given by the witness.
9
10 It was requested before
11 completion of the deposition that the
12 witness, JUDITH A. CHEVALIER, Ph.D., have
13 the opportunity to read and sign the
14 deposition transcript.
15
16 
17 MICHELLE L. GRAY,
18 A Registered Professional
19 Reporter, Certified Shorthand
20 Reporter, Certified Realtime
21 Reporter, Certified Court
22 Reporter and Notary Public
23 Dated: March 6, 2024
24
25 (The foregoing certification
26 of this transcript does not apply to any
27 reproduction of the same by any means,
28 unless under the direct control and/or
29 supervision of the certifying reporter.)
30
31
32

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1 INSTRUCTIONS TO WITNESS
2
3 Please read your deposition
4 over carefully and make any necessary
5 corrections. You should state the reason
6 in the appropriate space on the errata
7 sheet for any corrections that are made.
8 After doing so, please sign
9 the errata sheet and date it.
10 You are signing same subject
11 to the changes you have noted on the
12 errata sheet, which will be attached to
13 your deposition.
14 It is imperative that you
15 return the original errata sheet to the
16 deposing attorney within thirty (30) days
17 of receipt of the deposition transcript
18 by you. If you fail to do so, the
19 deposition transcript may be deemed to be
20 accurate and may be used in court.
21
22
23
24

1	LAWYER'S NOTES		
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